FORM NLRB-4477
(4-96)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MUNSON MEDICAL CENTER **Employer**	
and	**CASE GR-7-RC-22171**
GENERAL TEAMSTERS UNION, LOCAL NO. 406, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO **Petitioner**	

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(*c*) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(*b*) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:[1/]

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization(*s*) involved claim(*s*) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(*c*)(*1*) and Sections 2(*6*) and (*7*) of the Act.[2/]

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(*b*) of the Act:[3/]

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(*s*) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(*s*) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees

engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

GENERAL TEAMSTERS UNION, LOCAL NO. 406,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

LIST OF VOTERS*

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***N.L.R.B. v. Wyman-Gordon Company***, 394 U.S. 759 (1969); ***North Macon Health Care Facility***, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within **7** days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **March 27, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **April 3, 2002.**

Dated March 20, 2002

at Detroit, Michigan

/s/ William C. Schaub, Jr.
Regional Director, Region Seven

Section 103.20 of the Board's Rules concerns the posting of election notices.
Your attention is directed to the attached copy of that Section.

*If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.

1/ Both parties submitted briefs, which were carefully considered.

2/ Contrary to the Employer, I find that the instant petition raises a question concerning representation. The Employer's motion to dismiss the petition is therefore denied.

Petitioner first sought an election among certain employees of the Employer by a petition filed on November 27, 2001 in Case GR-7-RC-22126. A hearing was conducted on that petition on December 17, 2001, centering on the issue of whether the petition was barred by a contract between the Employer and another labor organization. Petitioner maintained that the incumbent union had recently disclaimed interest in the unit. The Employer unsuccessfully attempted to introduce evidence at the December 17 hearing that the incumbent union's disclaimer was invalid. Following the hearing, the Employer filed a brief in which it argued that rejection of its proffer was improper and moved for the hearing to be reopened for the receipt of evidence regarding the disclaimer of interest.

By order dated January 10, 2002, the undersigned granted the Employer's motion and reopened the hearing in Case GR-7-RC-22126 on February 5, 2002. During the February 5 hearing, Petitioner submitted a written request to withdraw its petition in Case GR-7-RC-22126. Before handing the withdrawal request to the Hearing Officer, Petitioner's counsel showed the request to the Employer's counsel. Petitioner's withdrawal request was also read into the official record. The hearing was then closed.

On February 6, 2002, the Employer filed a pleading opposing Petitioner's withdrawal request. On the same date, Petitioner filed a new petition -- the petition in the instant case -- seeking an election among the same unit employees. By order dated February 8, 2002, the undersigned approved without prejudice Petitioner's withdrawal of the original petition. The Employer appealed this order to the Board. On March 5, 2002, the Board denied the Employer's appeal.

The Employer contends that the instant petition should be dismissed on the dual grounds that the Employer was not served with a copy of Petitioner's February 5 withdrawal request and that the instant petition is "untimely" because it coexisted for two days with the original petition.

Due process requires service and notice of a document when the filing of that document gives rise to a right of action by another. It was not Petitioner's withdrawal request, but the undersigned's order granting the request, that gave rise to the Employer's right to appeal. The Employer was duly served with the

undersigned's order approving the withdrawal request. The Employer acted upon it by filing its unsuccessful appeal.

The Employer cites Sections 102.111(b) and 103.113(f) [sic] of the Board's Rules and Regulations in support of its argument. Section 102.111(b) pertains to time computations and does not appear to apply. Section 103.113(f) [sic] does not exist, but assuming the Employer was intending to refer to 102.113(f), regarding service upon representatives of parties, that section was satisfied. The Employer's counsel admitted at the hearing on the instant petition that Petitioner's counsel gave him a copy of the withdrawal request at the hearing on February 5. He also admitted that the Employer has not made a formal application to the Region for a copy of the withdrawal request. As a practical matter, the Employer saw the actual withdrawal request and heard it read at the Board's offices virtually at the very moment that the request was filed. The Employer does not explain what additional information would have been imparted or purpose advanced had Petitioner served the request upon the Employer or its counsel at their business offices at some other time.

The Board's rules do not require that Petitioner's withdrawal request be served in the manner urged by the Employer. I further find that the Employer was formally served with a copy of the undersigned's February 8 order and effectively served with a copy of Petitioner's withdrawal request.

The Employer also urges that the instant petition must be dismissed because withdrawal of the original petition was not yet approved at the time the new petition was officially filed. I am aware of no rule that requires such prior approval.

The Employer asks for reconsideration of the February 8 order approving the withdrawal request without prejudice. Both the undersigned and the Board have fully considered the Employer's position and found it unpersuasive. No new evidence or argument has been marshaled to support a different conclusion.

Finally, the Employer requests under Section 102.67(h) that the instant petition be transferred to the Board. I am denying this request but obviously the matter will be reviewed by the Board if either party seeks such review.

3/ The instant petition seeks an election among all full-time and regular part-time employees in the laundry support services, food and nutrition / environmental services, and plant engineering departments employed at three particular acute health care facilities of the Employer. This group includes all of the Employer's skilled maintenance employees and no technical employees. With but minor variations, this same unit has been covered by successive contracts between the Employer and another labor organization for at least three decades.

The Employer expressly refused to take a position on the appropriateness of the unit and offered no evidence on the issue of unit appropriateness.

The sought unit does not conform to any of the eight appropriate units in the acute health care industry enumerated in Section 103.30(a) of the Board's Rules and Regulations. However, a clear exception applies for preexisting non-conforming units. ***Crittenton Hospital***, 328 NLRB 879, 880-881 (1999); ***Kaiser Foundation Hospitals***, 312 NLRB 933 (1993); see also, ***Pathology Institute***, 320 NLRB 1050 (1996), enfd. 116 F.3d 482 (9th Cir. 1997), cert. denied 522 U.S. 1028 (1997). Here, a non-conforming unit has existed for over 30 years. No evidence or argument has been mustered to demonstrate why the preexisting unit exception should not govern the result here. I find that it does.

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time laundry support services, food and nutrition / environmental services, and plant engineering department employees employed at the Employer's Traverse City, Michigan facilities located at 1105 Sixth Avenue, 891 Hughes Drive, and 550 Munson Avenue, including linen technicians, food service workers, EVS techs II, EVS techs III, EVS techs IV, cashiers, bakers, cooks I and II, production techs, grounds and vehicles employees, laborers, healthcare mechanics, certified healthcare mechanics, senior certified healthcare mechanics, CDL drivers, skilled trades assistants, painters, carpenters-cabinet makers, carpenters-construction, plant operators III, EMMTs I and II, licensed chief plant operators, electricians, plumbers, and licensed HVACR; but excluding clerical, administrative, executive, technical, and professional employees, courtesy van drivers, supervisors and guards as defined in the Act, and all other employees.

All those eligible to vote shall vote whether or not they wish to be represented for collective bargaining by General Teamsters Union, Local No. 406, International Brotherhood of Teamsters, AFL-CIO.

393-6034-0100